IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT APPEAL NO : 357 of 1999

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 5.2.1999 in WP.NO :2126 OF 1999 on the file of the High Court.)

Between:

K.Venkatapathi Raju, S/o.Satyanarayana Raju

Occ: Senior Assistant, O/o.Maharajah Alak Narayan

Society of Arts & Science (MANSAS) Fort,

Vizianagaram

..... APPELLANT

AND

1.The Government of Andhra Pradesh

rep.by its Principal Secretary

Revenue (Endowments) Department

Secretariat Buildings, Hyderabad

2. The Commissioner of Endowments,

Government of Andhra Pradesh, Hyderabad

3. The Assistant Commissioner & Executive Officer

Maharajah Alak Narayan Society of Arts & Science (MANSAS)

Fort, Vizianagaram

4. V.V.Sanyasi Raju, Occ: Senior Assistant

O/o.Maharajah Alak Narayan Society of Arts & Science

(MANSAS) Fort, Vizianagaram

.....RESPONDENTS

Counsel for the Appellant : MR.B.NAGESWARA RAO

Counsel for Respondent Nos.1 to 3: GOVERNMENT PLEADER FOR ENDOWMENTS

Counsel for Respondent No.4 : None appeared

The Court made the following JUDGMENT:(per TMK,J)

Heard the learned counsel for the appellant and the learned Government Pleader for respondent Nos.1 to 3. No representation for the 4th respondent.

The Writ Appeal is filed by the appellant-writ petitioner against the order, dated 5.2.1999, in Writ Petition No.2126 of 1999 passed by a learned single Judge of this Court.

The learned single Judge of this Court after going into the merits of the case dismissed the said writ petition observing that the impugned proceedings dated 5.6.1998 of the 2nd respondent-Commissioner and the consequential orders dated 8.6.1998 of the 3rd respondent-Assistant Commissioner cannot be interfered with only on the ground that the appellant-writ petitioner was not given an opportunity to have a say in the matter.

The case of the appellant-writ petitioner is that he joined the service as Junior Assistant on 3.12.1984 and has passed the Accounts Test Part-I on 17.6.1990 and the Departmental Tests parts I and II on 14.2.1989 and 28.5.1989 respectively. Even though the 4th respondent joined the service as Junior Assistant on 31.10.1984, he

has passed Accounts Test Part I on 21.5.1989 and the Departmental Tests parts I and II on 3.7.1991.

It is submitted before this Court by Smt. Bh.Bharathi Devi, learned counsel representing on behalf of Sri B.Nageswara Rao, learned counsel for the appellant-writ petitioner that the Secretary, Maharajah Alak Narayan Society of Arts & Science (MANSAS) recommended to upgrade the post of LDC to UDC which was accepted and the approval was also accorded by the 2nd respondent-Commissioner of Endowments Department on 13.3.1992 and on 23.4.1992, the appellant-writ petitioner was promoted to the post of Senior Assistant with effect from 1.4.1992. But, however, on a representation made by the 4th respondent, the 2nd respondent-Commissioner has passed the orders on 5.6.1998 promoting the 4th respondent as Senior Assistant in the upgraded post with effect from 1.4.1992 without any monetary benefit and placed him above the rank of Sri K.Venkatapathi Raju, who is the appellant herein and the said proceedings are impugned in the present writ petition.

The learned counsel for the appellant-writ petitioner argued that the appellant-writ petitioner has not been put on notice by the 3rd respondent-Assistant Commissioner and Executive Officer of MANSAS or by the 2nd respondent-Commissioner of Endowments before passing the impugned order as there is a change in the seniority due to promotion of the 4th respondent with retrospective effect. The learned counsel further argued that even assuming that the 4th respondent is eligible to hold the said post for any of the reasons as he has been placed above the seniority of the appellant-writ petitioner, the appellant-writ petitioner is entitled to be issued the notice by the 3rd respondent-Assistant Commissioner and in the absence of which, the learned counsel contended that it violates the principles of natural justice.

We see some force in the arguments advanced by the learned counsel for the appellant-writ petitioner but here it has to be observed that the 4th respondent has not chosen to question the orders dated 23.4.1992 passed by the Secretary, MANSAS upgrading the post of LDC to UDC and promoting the appellant-writ petitioner with effect from 1.4.1992. As the said proceedings have become final, the 3rd respondent-Assistant Commissioner and Executive Officer ought not to have

promoted the 4th respondent by placing him over and above the appellant-writ petitioner. In view of the fact that the said order dated 23.4.1992 has become final and as the said fact has not been taken cognizance of by respondent Nos. l, 2 and 3, we set aside the orders passed by the 2nd respondent-Commissioner of Endowments dated 5.6.1998 and the consequential orders passed by the 3rd respondent-Assistant Commissioner on 8.6.1998.

The material papers annexed to the Writ Appeal goes to show that the 4th respondent has made a representation only to extend the scale of pay eligible to the Senior Assistant.

The learned Government Pleader appearing for respondent Nos.1 to 3 has submitted that both the incumbents are working in the post of Senior Assistant.

In view of the above submission, we direct the MANSAS to continue both the incumbents in the available posts of Senior Assistant, but, however, without affecting the seniority of the appellant-writ petitioner.

Accordingly, the Writ Appeal is allowed. No costs.

(T.MEENA KUMARI, J)

(S.ANANDA REDDY, J)

DT: 22/02/2005

lvl/bsv

To

1.The Principal Secretary

Government of Andhra Pradesh

Revenue (Endowments) Department

Secretariat Buildings, Hyderabad

2. The Commissioner of Endowments,

Government of Andhra Pradesh, Hyderabad

3. The Assistant Commissioner & Executive Officer

Maharajah Alak Narayan Society of Arts & Science (MANSAS)

Fort, Vizianagaram

4.Two CCs to the Government Pleader for Endowments, High Court of A.P., Hyderabad (OUT)

5. Two CD copies